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September 9, 2015

Via ECF

Hon. Laura Taylor Swain
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *GE Healthcare Bio-Sciences AB et al. v. Bio-Rad Laboratories, Inc.*, Case No. 1:14-CV-07080-LTS-SN

Dear Judge Swain:

Defendant Bio-Rad Laboratories, Inc. ("Bio-Rad") writes this letter to request an order granting leave for Bio-Rad to supplement its initial invalidity contentions pursuant to Northern District of California Patent Local Rule 3-6, made applicable to this case by paragraph 4 of this Court's Pretrial Scheduling Order No. 1 (Dkt. 78). Bio-Rad has met and conferred with Plaintiffs GE Healthcare Bio-Sciences AB, GE Healthcare Bio-Sciences Corporation, and General Electric Company (collectively, "Plaintiffs"), and Plaintiffs have indicated that they do not oppose Bio-Rad supplementing its initial invalidity contentions as discussed herein.

Bio-Rad timely served its initial invalidity contentions on July 10, 2015. (Dkt. 113.) On August 10, 2015, Bio-Rad deposed third-party Metrohm USA, Inc. ("Metrohm"), the United States distributor of two machines asserted as prior art in this case—the Applikon ADI 2040 and Applikon ADI 2045—charted as Exhibits 1 and 2 to Bio-Rad's initial invalidity contentions. (Dkt. 113-1, 113-2.) At its deposition, Metrohm referenced and produced for the first time one document showing an expansion housing module capable of accommodating three additional wet part modules not included in documents previously discovered by Bio-Rad. This additional document is attached hereto as Exhibit 8.

Under N.D. Cal. Local Patent Rule 3-6, the recent discovery of new material information regarding prior art notwithstanding due diligence in pursuing the 2040 and 2045 prior art amounts to a showing of good cause for supplementing initial invalidity contentions. *See, e.g.*, *Symantec Corp. v. Veeam Corp.*, No. C 12-1035, 2013 WL 3490392, at *2-3 (N.D. Cal. July 11, 2013); *see also, e.g., Convolve, Inc. v. Compaq Computer Corp.*, 643 F. Supp. 2d 336, 340-44 (S.D.N.Y. 2008). Good cause is further reinforced by the lack of any prejudice to Plaintiffs from Bio-Rad's prompt addition of further disclosures from one single page newly produced by Metrohm in the invalidity charts with respect to a single one out of nine asserted claims—claim 14. Furthermore, Plaintiffs have indicated that they do not oppose Bio-Rad's supplementation.

For the reasons stated in this letter, Bio-Rad respectfully requests leave for the invalidity charts attached hereto as Amended Exhibits 1-7 to be filed as supplemental invalidity contentions to replace Exhibits 1-7, which were served with Bio-Rad's initial invalidity contentions (Dkt. 113-1 to 113-7).

Respectfully submitted,

/s/ Felipe Corredor
Felipe Corredor